

evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 1150.80 Affidavits.

An affidavit is not inadmissible as such. Unless the judge fixes other time periods, affidavits shall be filed and served on the parties not later than fifteen (15) days prior to the hearing. Not less than seven (7) days prior to hearing, a party may file and serve written objections to any affidavit on the ground that he/she believes it necessary to test the truth of its assertions at hearing. In such event the assertions objected to will not be received in evidence unless the affiant is made available for cross-examination, or the judge determines that cross-examination is not necessary for the full and true disclosure of facts referred to in such assertions. Notwithstanding any objection, however, affidavits may be considered in the case of any respondent who waives a hearing.

§ 1150.81 Consolidated or joint hearing.

In cases in which the same or related facts are asserted to constitute noncompliance with standards or guidelines and requirements, the judge may order all related cases consolidated and may make other orders concerning the proceedings as will be consistent with the objective of securing a just and inexpensive determination of the case without unnecessary delay.

§ 1150.82 PER proceedings.

(a) In proceedings in which a citation, or part of one, seeking PER has been filed, the judge shall make necessary rulings with respect to time for filing of pleadings, the conduct of the hearing, and to all other matters. He/she shall do all other things necessary to complete the proceeding in the minimum time consistent with the objective of securing an expeditious, just and inexpensive determination of the case. The times for actions set forth in these rules shall be followed unless otherwise ordered by the judge.

(b) The judge shall determine the terms and conditions for orders of

PER. These orders must be consistent with preserving the rights of all parties so as to permit the timely processing of the citation, or part of it, not requesting PER, as well as consistent with the provisions and objectives of the Architectural Barriers Act and section 502 of the Rehabilitation Act. In issuing an order for PER, the judge shall make the following specific findings of fact and conclusions of law—

(1) The Executive Director is likely to succeed on the merits of the proceedings;

(2) The threatened injury or violation outweighs the threatened harm to the respondent if PER is granted; and

(3) Granting PER is in the public interest.

(c) The judge may dismiss any citation or part of a citation seeking PER when the judge finds that the timely processing of a citation not requesting PER will adequately ensure the objectives of section 502 of the Rehabilitation Act and that immediate and irreparable harm caused by noncompliance with the standards or guidelines and requirements is not occurring or about to occur.

Subpart I—The Record

§ 1150.91 Record for decision.

The transcript of testimony, exhibits and all papers, documents and requests filed in the proceeding, including briefs and proposed findings and conclusions, shall constitute the record for decision.

§ 1150.92 Official transcript.

The official transcripts of testimony, and any exhibits, briefs, or memoranda of law filed with them, shall be filed with the judge. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the A&TBCB and the reporter. Upon notice to all parties, the judge may authorize corrections to the transcript as are necessary to reflect accurately the testimony.